

State of California  
BOARD OF EQUALIZATION  
  
**SALES AND USE TAX REGULATIONS**

**Regulation 1617. FEDERAL TAXES.**

*Reference:* Sections 6011, 6012, 6245.5 and 6423, Revenue and Taxation Code; 19 U.S.C. Section 1505(a); and 19 CFR Section 141.1(b).

**(a) FEDERAL EXCISE TAXES ON RETAIL SALES.** Gross receipts subject to sales tax and the sales price subject to use tax do not include the amount of any federal tax imposed upon or with respect to retail sales whether imposed upon the retailer or upon the consumer and regardless of whether the amount of federal tax is stated to the consumer as a separate charge.

Retailers must retain records to show that the amounts deducted as federal tax have been returned to the United States or will be returned to the United States.

**(b) OTHER FEDERAL EXCISE TAXES.**

(1) Except as indicated in subdivisions (b)(2) and (b)(3), gross receipts subject to sales tax and the sales price subject to use tax include the amount of any federal excise tax included in the prices of the property sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether or not the amount of such tax is stated as a separate charge.

(2) Prior to July 1, 1995, gross receipts subject to sales tax and the sales price subject to use tax do not include the amount of the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel or jet fuel for which the purchaser obtains either a direct refund or credit against his or her income tax.

(3) Beginning July 1, 1995, gross receipts subject to sales tax and the sales price subject to use tax do not include the federal excise tax imposed pursuant to Sections 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, or jet fuels for which the purchaser obtains either a direct refund or credit against his or her income tax.

**(c) IMPORT DUTIES.** Import duties are imposed by federal statute (19 U.S.C. Section 1505 (a)) on the importer of record. If the importer of record is a consignee and the consignee is the seller, import duties included in the price of the property sold are subject to sales and use tax. If the importer of record is a consignee and the consignee is the buyer, such duties are excludable from the sales price subject to use tax.

**(d) REPEAL OR REDUCTION OF FEDERAL TAXES.**

(1) **IN GENERAL — INSTALLMENT PAYMENTS.** When an article subject to a federal excise tax prior to the date such tax is repealed or reduced is sold under an agreement calling for payment of the sales price in installments, payments made on or after the repeal or reduction date will be considered as if they were made with respect to an article sold on or after the repeal or reduction date if the vendor establishes that the amount of payments due on or after such date were reduced by an amount equal to the tax reduction.

(2) **RETAILERS' EXCISE TAXES COLLECTED AFTER REPEAL.** Amounts collected by a retailer as federal retailers' excise tax after the tax has been repealed, but neither paid by the retailer to the Internal Revenue Service nor refunded to its customers, constitute gross receipts subject to sales tax.

**(e) REFUNDS OF FEDERAL TAXES.**

(1) **REPAYMENT BY MANUFACTURER TO RETAILER.** When a manufacturer receives a refund of federal excise tax and repays the amount of the tax to the retailer pursuant to requirements of federal law, the repayment to the retailer will be regarded for sales and use tax purposes as a reduction of the retailer's cost of goods sold.

## Regulation 1617. (Continued)

(2) REPAYMENT TO CONSUMER. When a manufacturer receives a refund of federal manufacturers' excise tax and repays the amount of the tax to the consumer either directly or through the retailer pursuant to requirements of federal law, the repayment to the consumer will be regarded for sales and use tax purposes as a price adjustment. Taxable gross receipts of the retailer for the period in which the repayment is made to the consumer will be reduced accordingly, and sales tax previously paid by the retailer on the amount will be refunded to the retailer, provided the amount collected from the consumer as sales tax reimbursement is also refunded to him or her.

(3) REFUNDS ON GASOLINE, DIESEL OR JET FUEL. The refund of the federal excise tax imposed by Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel may file with the board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

*History:* Effective July 1, 1943.

Adopted as of January 1, 1945, as a restatement of previous rulings.

Amended June 22, 1964.

Amended September 12, 1968.

Amended and renumbered August 5, 1969, effective September 6, 1969.

Amended April 30, 1990, effective July 7, 1990. Added paragraph (b)(2) to provide that the sales tax does not apply to certain manufacturer's or importer's federal excise tax imposed under Section 4091, Internal Revenue Code. Renumbered paragraph (c) to (d) and (d) to (e). Added paragraph (c) to explain the application of the sales and use tax to federal import duties that are includable in the measure of tax if the seller is the consignee and not includable if the buyer is the consignee.

Amended June 23, 1993, effective November 13, 1993. Amended paragraphs (d)(2) and (e)(2) to delete gender-related language. Added new paragraph (e)(3) to explain the procedures for claiming a refund of sales or use tax paid on the federal importer's or producer's excise tax on diesel or jet fuel which federal tax has been refunded by the federal government either directly or as a credit against income tax.

Amended November 20, 1996, effective February 22, 1997. Added subdivision (b)(3). Added a cross-reference to new subdivision (b)(3) to subdivision (b)(1) and a termination date to subdivision (b)(2).

Amended August 1, 2001, effective December 1, 2001. Word "manufacturers" or "importers" changed to "federal" or "other federal" throughout to conform to changed usages. Subdivision (a)—in title, word "RETAILER'S" replaced with "FEDERAL" and words "ON RETAIL SALES" added. Subdivision (b)(1)—word "subdivisions" added prior to "(b)(2)" and comma and word "below" deleted after "(b)(3)". Subdivision (b)(2)—"and" replaced with "or" between "fuel" and "jet"; phrase "certifies . . . to" replaced with "obtains"; and phrase "for . . . paid" and last sentence deleted. Subdivision (b)(3)—word "and" between "4081" and "4091" and prior to "jet" replaced with "or"; phrase "certifies . . . to" replaced with "obtains"; and phrase "for . . . paid" and last sentence deleted. Subdivision (e)(3), first sentence — words "importer's or manufacturer's" deleted after "federal" and phrase "imposed by Section 4081 . . . to" added after "excise tax".

*Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.*